UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF PENNSYLVANIA

PETER M. KING, :

Plaintiff, :

3:12-CV-491

v. :

TOBYHANNA ARMY DEPOT : (JUDGE MANNION)

and LEON PANETTA,

SECRETARY OF DEFENSE :

Defendants, :

MEMORANDUM

Pending before the court is the report and recommendation, (Doc. No. 30), of Judge Thomas Blewitt, recommending the dismissal of plaintiff's complaint, (Doc. No. 1), in its entirety for failure to exhaust his administrative remedies under the Civil Servant Reform Act (CSRA) and Veterans Employment Opportunities Act (VEOA). Because the court agrees that plaintiff failed to exhaust his administrative remedies and, even if he had exhausted his remedies, failed to file suit with the Federal Circuit, the court will ADOPT the report and recommendation IN ITS ENTIRETY and DISMISS plaintiff's complaint WITH PREJUDICE.

BACKGROUND

This case arises out of a labor dispute in which plaintiff alleges that defendants denied him veterans preferences, a fair opportunity to compete for federal employment, and seniority in applying for jobs. He also claims that they breached his employment contract and harassed him for filing

employment grievances and asserting his veterans preferences. (Doc. No. 1, at 6.) In December 2007, plaintiff was hired at Tobyhanna Army Depot as a part-time WG-09 employee on second shift. (Doc. No. 1, at 2.) In November 2008, he was placed on a federal hiring list for a permanent WG-09 position but, despite his excellent qualifications and eligibility for veterans preferences, he was not selected for the job. (Doc. No. 1, at 2.) Plaintiff was placed on the hiring list for another permanent position in 2009, but was again denied the job. (Doc. No. 1, at 2.) Shortly after the alleged second incident, a 15-6 investigation was conducted at Tobyhanna to determine whether the facility personnel had engaged in unfair hiring practices. (Doc. No. 1, at 2.) One of plaintiff's superiors was removed from his position but nothing else was done to remedy the alleged employment violations of which plaintiff complains. (Doc. No. 1, at 2.)

In 2010, plaintiff was again placed on a federal hiring list for a WG-09 position but he was not offered the position, again despite his qualifications and veterans preferences. (Doc. No. 1, at 3.) Around this time, Tobyhanna management decided to lay off all term employees. (Doc. No. 1, at 3.) Plaintiff was scheduled to be terminated in January of 2011, but this date was later extended until September 2011. (Doc. No. 1, at 3.)

In June of 2011, plaintiff was, for the fourth time, placed on a federal hiring list for a permanent WG-07 position. (Doc. No. 1, at 3.) A month later,